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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/825,180

Filing Date: April 16, 2004

Appellant(s): MIZUKI ET AL.

Leonidas Boutsikaris
Reg. No. 61,377
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 23 July 2010 appealing from the Office action mailed 25 January 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 1-2 and 4-10.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

US 6,354,944 B1 Takahashi et al 03-2002.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-2 and 4-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Takahashi et al (US 6,354,944 B1).

Regarding claims 1 and 6; Takahashi discloses:

An image processing apparatus that displays on a display an image in which an operating object appearing in a virtual three-dimensional space is seen from a predetermined viewpoint location, (col. 2:28-32).

An -operation controller operated by a player, (col. 2:43-47, 5:34-35).

A selecting programmed logic circuitry for selecting the operating object appearing in said virtual three-dimensional space, out of a plurality of the operating objects different in size, based on an operation of said operation controller, (col. 3:54-62 and 13:51-55), whereas the viewpoint is dependent to the size of the player character, inherently includes a plurality of sizes and thus a plurality of characters for the player or system to choose from, and wherein the picture view of the surroundings are dependent on the manipulation of the character.

A viewpoint-location setting programmed logic circuitry for setting the viewpoint location in correspondence with said operating object selected by said selecting mechanism, (13:51-55).

An image displaying programmed logic circuitry for displaying a three-dimensional image including said operating object based on said viewpoint location set by said viewpoint location-setting programmed logic circuitry, (col. 15:9-12).

Wherein said viewpoint-location setting programmed logic circuitry sets the viewpoint-locations in such a manner so that each of operating objects selected by said selecting programmed logic circuitry is displayed to have approximately the same size, even if any one operating object is selected out of said plurality of operating objects different in size, (col. 2:18-22 and 3:54-62]), disclosed in the invention of Takahashi is the fact the invention intention is to generate the optimum view from the avatar angle depending on the size of the character selected for viewing.

By adjusting the distance to the back of the character to be larger when the character is of large size and getting closer when the character is smaller, will produce the effect of maintaining the character in view of the same size in the viewing screen and maintaining the optimum view. Not disclosed but understood is that the optimum view will generate for every character size the same size (or optimum size), on the window. Simply stated, at least one possibility is that Takahashi's viewpoint changes such that all of the objects displayed are approximately the same size--when objects are located near each other at the location displayed. Wherein by moving the camera viewpoint away for a large character and moving it closer for a small character will inherently maintain the same size or optimal size of the character, at least approximately.

Regarding claims 2 and 7; Takahashi discloses viewpoint-location-data storing locations for storing each viewpoint location data correlated with each of said plurality of the operating objects; wherein said viewpoint-location setting programmed logic circuitry reads out from said viewpoint-location-data storing locations said viewpoint location data corresponding to said operating object selected by said selecting programmed

logic circuitry to set said viewpoint location, (col. 8:36-39), wherein viewpoint data is previously determined and stored to be accessed during the running of the program.

Regarding claim 8; Takahashi discloses wherein each of said viewpoint location data is set in such a manner as to be displayed as the operating object approximately the same in size even if any one of the operating objects is selected by said selecting, (col. 2:18-21 and 8:8-12), wherein the program selects the optimum viewpoint according the player character size, it would be necessary for the system to show all characters approximately the same size as to give all players the same viewing advantage in the playing field, where in a game of limited screen display, a larger character viewed from an avatar point, would cover the screen and make it impossible for the player to view his opponent.

Regarding claims 4 and 9; Takahashi discloses wherein said viewpoint location data includes distance data from a point-of-regard (point B), said viewpoint-location setting programmed logic circuitry reads out said distance data corresponding to said operating object selected by said selecting programmed logic circuitry to set said viewpoint location, (Fig. 6, B1-B3, col. 8:25-39), reference point B and distance D.

Regarding claims 5 and 10; Takahashi discloses wherein said viewpoint location data includes angle data or height data from the point-of-regard, and said viewpoint-location setting programmed logic circuitry reads out said angle data or said height data corresponding to said operating object selected by said selecting programmed logic circuitry to set said viewpoint location, (fig. 4), wherein angle “Alpha” and height “yB” set viewpoint location to be C(xc, yc, zc).

(10) Response to Argument

The examiner finds the arguments not persuasive for the following reasons;

In page 11 of the brief, the appellant has argued that; "*Takahashi does not disclose, teach or suggest "wherein said viewpoint-location setting programmed logic circuitry sets the viewpoint-locations in such a manner so that each of operating objects selected by said selecting programmed logic circuitry is displayed to have approximately the same size, even if any one operating object is selected out of said plurality of operating objects different in size"*", as required by claim 1", yet appellant admits that "*In Takahashi, each particular object is made to appear as to have the same size regardless of its position in the virtual space, by moving the distance of the virtual camera from the object. More specifically, in Takahashi, the set position of the virtual camera from the player character depends on the size of the player character (see col. 10, lines 21-25). In other words, if the player character is large, then the distance of the virtual camera from the player character is set to be large. On the other hand, if the size of the player character (i.e., that same player character) is small, then the distance of the virtual camera from the player character is set to be small. In Takahashi, this adjustment of the distance of the virtual camera is done for a particular player character.*" This feature is the commonly known avatar view in which the player views his character (selected operating character), directly from behind the character in order to see the character and the area in front of the character. This is the exact view depicted in the present application as shown in figures 9, 10 and 11 of the present application, and that appellant's own admission in figure 6 shows the present application camera views and angles to be the

same as Takahashi figure 4. Whereas Takahashi is creating an optimum view point for the player, the final product is a view point that shows the operating character to have approximately the same size in the window of the screen, (see column 10 lines 21-25 and column 3 lines 54-62).

According to MPEP 2112 [R-3] I.

“[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art’s functioning, does not render the old composition patentably new to the discoverer.” *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

And MPEP 2112 [R-3] II.

There is no requirement that a person of ordinary skill in the art would have recognized the inherent disclosure at the time of invention, but only that the subject matter is in fact inherent in the prior art reference. *Schering Corp. v. Geneva Pharm. Inc.*, 339 F.3d 1373, 1377, 67 USPQ2d 1664, 1668 (Fed. Cir. 2003) (rejecting the contention that inherent anticipation requires recognition by a person of ordinary skill in the art before the critical date and allowing expert testimony with respect to post-critical date clinical trials to show inherency); see also *Toro Co. v. Deere & Co.*, 355 F.3d 1313, 1320, 69 USPQ2d 1584, 1590 (Fed. Cir. 2004)(“[T]he fact that a characteristic is a necessary feature or result of a prior-art embodiment (that is itself sufficiently

described and enabled) is enough for inherent anticipation, even if that fact was unknown at the time of the prior invention.”)

The appellant admits to the “same size” issue yet the appellant arguments that not all operating objects are viewed the same size is outside the scope of claim 1 because only the one selected operating object is viewed singularly when selected, in the same size as the other operating objects when the other operating objects are selected as well. For it is the examiner’s point that the virtual camera views are only presented one at a time on the video screen and that it is impossible to show two or more camera views on a display without splitting the screen, to which each split would be another display image not disclosed in the present application.

As to the argument on top of page 12 of the brief; “*However, Takahashi does not teach that of the different characters regardless of their size (“even if any one operating object is selected out of said plurality of operating objects different in size”, as required by claim 1) are made to appear as having the same size by appropriately changing the viewpoint location for each object.*” The examiner has pointed out in Takahashi column 3 lines 58-62; “*For example, if the character is large, or if there are a plurality of characters, the second distance is set to a large distance, so that all of the characters can be seen, whereas if the characters are small, or there is only one character, then the second distance is set to a short distance.*” Disclosing a plurality of characters of different sizes and an adjustment to the camera angles according to their sizes.

Regarding the argument in page 13 of appellant’s brief; “*It appears that the Examiner confuses the adjustment of a particular game character so that it appears to have the*

same size regardless of its position in the virtual space, taught in Takahashi, with the adjustment of each of the game characters so that all appear to have the same size, taught in the invention of claim 1. As explained above, Takahashi merely teaches to maintain the displayed size of a particular object with respect to itself (e.g., the character shown in Figs. 7-9 of Takahashi in various positions). In contrast, and as can be seen from Figs. 9-1 1 of the instant specification, all different objects (e.g., objects A, B, C in Fig. 8 of the instant specification) appear to have approximately the same size (e.g., see Figs. 9- 1 l), even though before the application of the claimed process they had different sizes.” The appellant must understand the figures 9-11 of the present application shows the avatar view of each single character alone, and that if another character were in the picture, there true virtual size would show, since the present application can only show one selected operational object at a time.

Regarding dependent claims 2, 4-5 and 7-10, the examiner deems the rejections proper and the argument not persuasive.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Frank M Leiva/

Examiner, Art Unit 3717

Conferees:

/Melba Bumgarner/

Supervisory Patent Examiner, Art Unit 3717

/David L Lewis/

Supervisory Patent Examiner, Art Unit 3714